

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2641 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

GUJARAT WATER SUPPLY & SEWERAGE BOARD

Versus

REVABHAI KUKABHAI

Appearance:

MR HS MUNSHAW for appellant

MR AJ PATEL for Respondent No. 1

MR HL JANI, ASSTT.GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/08/1999

ORAL JUDGEMENT

(Per: J.M.Panchal,J.)

Admitted. Mr.A.J.Patel, learned counsel waives service of notice on behalf of respondent No.1. Mr.H.L.Jani, learned Asstt. Govt. Pleader waives service of notice on behalf of respondent No.2. At the joint request of learned counsel appearing for the parties, appeal is taken up for hearing today.

.RS 2

#. By means of filing this appeal under Sec.54 of the Land Acquisition Act, 1894, read with Sec.96 of Code of Civil Procedure, 1908, the Gujarat Water Supply and Sewerage Board has challenged legality of judgment and award dated February 4, 1998 rendered by the learned IInd Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur in Land Acquisition Case No.747/1991.

#. A proposal was sent by the Executive Engineer, Public Health Construction, Divn. No.II, Ahmedabad to acquire agricultural land bearing Survey No.92 situated in the sim of Village Kotda, Taluka Dolka, District Ahmedabad for the public purpose of Bhadar Group Water Supply Scheme. On scrutiny of the said proposal, the State Government was satisfied that the said land was likely to be needed for the said public purpose. Accordingly, notification under Sec.4 of the Land Acquisition Act, 1894 ('the Act' for short) was issued which was published in the Government Gazette on September 22, 1988. The respondent No.1 who was owner of the land was served with notice under Sec.4 of the Act and he had lodged objections against the proposed acquisition. After considering the objections raised by the respondent No.1, the Land Acquisition Officer had forwarded the report to the State Government as contemplated by Sec.5-A(2) of the Act. On consideration of the said report, the state Government was satisfied that land specified in the notification published under Sec.4(1) of the Act was needed for the public purpose of Bhadar Group Water Supply Scheme. Therefore, declaration under Sec.6 of the Act was made which was published in Government Gazette on October 9, 1989. The respondent No.1 was thereafter served with notice for determination of compensation. The respondent No.1 appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.25/- per sq.mtr., but having regard to the materials placed before him, the Land Acquisition Officer by his award dated June 27, 1991 offered compensation to the respondent No.1 at the rate of Rs.1.50 per sq.mtr., the respondent No.1 was of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, he made application in writing

requiring the Land Acquisition Officer to refer the matter to the court for determination of appropriate compensation. Accordingly, reference was made to the District Court, Ahmedabad (Rural) at Mirzapur which was numbered as Land Acquisition No.747/1991. In the reference application, it was pleaded by the respondent No.1 that the land acquired was highly fertile and having regard to the over all development which had taken place near the acquired land, he was entitled to compensation at the rate of Rs.25/- per sq.mtr. The present appellant as well as the Land Acquisition officer contested the reference application by filing reply at exh.10 contending inter alia that determination of market value of the land acquired, by the Land Acquisition Officer was just and, therefore, reference application should be dismissed.

#. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court at exh.9. In order to substantiate the claim advanced in the reference application, the respondent No.1 examined himself at exh.17. In his evidence before the Court, he gave particulars about the land acquired and claimed that he was taking two crops in a year. He asserted before the Court that he was earning Rs.25,000/to Rs.30,000/- per year as gross income from the sale of agricultural produces. He produced Village Form No.7/12 extract at exh.18. The witness also produced certificate issued by Talati-cum-Mantri indicating the distance between Village Kotda and Dhandhuka Town at exh.19. In his cross-examination, the witness denied the suggestion made on behalf of the acquiring authorities that he was taking one crop in a year. The witness also produced previous awards of the Reference Court rendered in respect of lands of Dhandhuka Town at exhs.34 and 41 respectively. We may state that no evidence was led on behalf of the acquiring authorities. On appreciation of evidence led by the claimants, the Reference Court held that the previous awards produced by the claimant were comparable as well as relevant for the purpose of determining market value of the lands acquired in this case. Exh. 34 indicated that the Court had determined market value of the lands of Dhandhuka Town at Rs.25/- per sq.mtr as on 18-10-1979 which was the date of publication of notification under Sec.4(1) of the Act whereas exh.41 showed that the Court had determined market value of lands of said town at Rs.20/- per sq.mtr. as on 2-10-1980 which was the date on which preliminary notification under sec.4(1) of the Act was published. In ultimate analysis, the Reference Court has held that the claimant is entitled to

compensation at the rate of Rs.20/- per sq.mtr. by the impugned award giving rise to the present appeal.

#. The learned counsel for the appellant submitted that previous awards of the Court produced at exh.s34 and 41 were neither comparable nor relevant and, therefore, the same should not have been made basis by the Reference Court for the purpose of determining market value of the lands acquired in the present case. It was claimed that no cogent evidence was led by the respondent No.1 in support of his claim for enhanced compensation and, therefore, the reference application ought to have been dismissed. What was stressed was that in view of the distance between Village Kotda and Dhandhuka Town which is roughly 2 1/2 kms., the Reference Court was not justified in granting additional compensation of Rs.18.50 per sq.mtr. and, therefore, the impugned award should be set aside.

#. Mr.A.J.Patel, learned counsel for the respondent No.1 submitted that the previous awards produced by the claimant at exhs.34 and 41 are relevant as well as comparable and, therefore, it cannot be said that any error was committed by the Reference Court in placing reliance on them while determining market value of the lands acquired in the present case. Learned counsel for the claimant emphasized that though lands of Dhandhuka Town were acquired pursuant to publication of notification under sec.4(1) of the Act on October 18, 1979 and October 2, 1980, i.e. roughly 8 years prior to publication of notification under sec.4(1) of the Act in the present case, the Reference Court has not granted any reasonable rise in price of land and, therefore impugned award should not be interfered with in the present appeal. After referring to the evidence of the claimant, it was asserted that on the date of publication of notification under sec.4(1) of the Act, there was an over all development near the land which was acquired and, therefore, the just award of compensation rendered by the Reference Court should be upheld by the Court. Mr.H.L.Jani, learned Asstt. Govt. Pleader contended that without any cogent reasons, the Reference Court has enhanced compensation and, therefore, appeal should be accepted.

#. We have heard learned counsel for the parties at length. We may state that pursuant to order dated July 16, 1999, record of the case is received and we have taken into consideration the record, before deciding the present appeal. As noted earlier, the respondent No.1 had examined himself at exh.17. In his evidence, the

witness had given particulars of the land acquired as well as development which had taken place near the land acquired. According to the witness, the population of the Village was 3,000 and GIDC estate was situated just near his land. It is relevant to notice that this assertion made by the witness was never challenged by the acquiring authorities when he was subjected to cross-examination. Though it was claimed by the respondent No.1 that he was earning Rs.25,000/- per year from the sale of agricultural produces, he could not substantiate his this say and, therefore, the Reference Court was justified in not determining market value of the lands acquired on yield basis. However, the claimant had produced two previous awards of the Reference Court at exhs.34 and 41 for consideration of the Court. Exh.34 indicates that land belonging to Rahemanbhai Daudbhai situated in Dhandhuka Town were acquired for public purpose of construction of Referral Hospital. Therein preliminary notification under Sec.4(1) of the Act was published on October 18, 1979. The land Acquisition Officer by his award dated July 7, 1983 had offered compensation to the owner of the said land at the rate of Rs.2.75 per sq.mtr., but in reference, the Reference Court directed the acquiring authorities to pay additional compensation at the rate of Rs.22.25 per sq.mtr after determining market value at Rs.25/- per sq.mtr. by judgment and award dated September 29, 1984. Similarly exh.41 shows that land belonging to one Babubhai Jethabhai and another situated in Dhandhuka Town was acquired for the public purpose of Public Works Department Store. In the said case, notification under Sec.4(1) of the Act was published on October 2, 1980 and the Land Acquisition Officer by his award dated May 31, 1982 had offered compensation to the owner at the rate of Rs.2.75 per sq.mtr., but in reference, the Reference Court directed the acquiring authorities to pay additional compensation at the rate of Rs.17.25 per sq.mtr. after determining market value at Rs.20/- per sq.mtr. by judgment and award dated October 30, 1986. It is relevant to note that claimant Revabhai Kukabhai in his evidence asserted that the lands of Dhandhuka Town which were previously acquired were similar to his land. Though sufficient opportunity was given to the appellant as well as the respondent No.2, it was never pointed out by any of them that the land acquired in the present case was inferior in quality to the lands of Village Dhandhuka which were previously acquired. It is well settled that previous award of the Reference Court in respect of similar land of the same Village or adjacent Village and which has become final can be relied upon for the purpose of ascertaining market value of the lands acquired

subsequently in another Village. It is relevant to note that in those two earlier awards, notifications under Sec.4(1) of the Act were published on October 10, 1979 and October 2, 1980 respectively whereas in the present case, notification under Sec.4(1) of the Act was published on September 22, 1988. The Reference Court has not granted reasonable rise in price of land to which the claimant would have been entitled to because of passage of time. In our view, by no stretch of imagination, determination of market value of the land acquired in the present case can be regarded as excessive so as to warrant interference of the Court in the present appeal. We are of the firm opinion that the Reference Court has correctly appreciated the evidence on record and applied correct principles of law laid down by the Supreme Court of India while determining market value of the lands acquired. As we have come to the conclusion that determination of compensation by the Reference Court is not excessive at all, the appeal cannot be entertained and is liable to be dismissed.

#. For the foregoing reasons, the appeal fails and is dismissed with no order as to costs.

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